

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 17.38.106)
pertaining to fees for review)
of public water and sewage) (PUBLIC WATER SUPPLY)
system plans and)
specifications

TO: All Concerned Persons

1. On December 16, 2004, the Board of Environmental Review published MAR Notice No. 17-223 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 2983, 2004 Montana Administrative Register, issue number 24.

2. The Board has amended the rule as proposed, but with the following changes:

17.38.106 FEES (1) through (2)(a) remain as proposed.

(b) The fee schedule for designs requiring review for compliance with department Circular DEQ-2, 1999 edition, is set forth in Schedule II, as follows:

SCHEDULE II

Chapter 10 Engineering reports and facility plans,	
engineering reports (minor)	\$ 300
comprehensive facility plan (major)	\$1,000
Chapter 30 Design of sewers	
< 1320 lineal feet with standard specs	\$ 150
< 1320 lineal feet without standard specs ...	\$ 450
> 1320 lineal feet with standard specs	\$ 300
> 1320 lineal feet without standard specs ...	\$ 600
Sewer extension certified checklist	\$ 100
Chapter 40 Sewage pumping station	
100 <u>1,000</u> gpm or less	\$ 800 400
greater than <u>1000</u> gpm	\$1,200 800
Chapter 60 Screening grit removal	\$1,000
screening devices and comminutors	\$ 300
grit removal	\$ 300
flow equalization	\$ 500
Chapter 70 Settling	\$ 800
Chapter 80 Sludge handling	\$1,600
Chapter 90 Biological treatment	\$2,400
nonaerated treatment ponds	\$ 800
aerated treatment ponds	\$1,400

Chapter 100 Disinfection.....\$ 500
Appendices A, B, C & D (per design).....\$ 700
(c) through (7) remain as proposed.

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: One commentor was concerned with the amount of time that he expended in trying to get a well, which was constructed without prior review, approved.

RESPONSE: Section 75-6-112, MCA, and the Administrative Rules of Montana require that a person may not commence any construction or alteration of a public water supply system prior to the Department reviewing and approving plans and specifications. This requirement is in place to ensure that the proposed construction or alteration will meet design standards. The amount of time required in reviewing a system or component that is already constructed may be very large; however, the Department is still required by 75-6-108, MCA, to recover costs associated with those reviews. By submitting plans prior to construction, a person may avoid such extended review times. The subject of the commentor's concern is not addressed by the proposed rulemaking. Because this comment is beyond the scope of the proposed rule, no change to the proposed rule is being made in response to the comment.

COMMENT NO. 2: Several commentors were concerned that they were being required to pay to have an existing system reviewed.

RESPONSE: The proposed fees will affect only those persons proposing to construct new systems or to modify an existing system. Existing systems that are not making changes to their system will not be affected by these amendments.

COMMENT NO. 3: One commentor was concerned with the proposed increases as they may affect a small system like his.

RESPONSE: Section 75-6-108, MCA, which establishes the Board's authority to set fees for public water supply systems, does not set out a fee schedule based on size of systems. The statute requires the Department to recover its costs associated with the review process. Because smaller systems are generally less complex and have fewer components, they would pay lower fees than larger systems.

COMMENT NO. 4: One commentor was concerned that the increase in fees is associated with the costs of conducting required monitoring, and that the increase in fees would lead to an increase in monitoring requirements.

RESPONSE: The proposed fees for this rule are applicable only to plan and specification reviews of new systems or existing systems being submitted for alteration or modification. The proposed fees do not reflect sampling requirements or costs.

COMMENT NO. 5: One commentor stated that review fees had been made in the past and no permit had been received.

RESPONSE: The permit in question was for a Montana Pollutant Discharge Elimination System (MPDES) permit, and that permit process is still on-going.

COMMENT NO. 6: Several comments were received stating a concern that the amount of review time indicated, by division of the fee by the flat rate of \$50 per hour, was excessive for that particular type of review. One comment was specific to "grit removal," Chapter 60, and another commentor was specific to sewage pumping stations, Chapter 40.

RESPONSE: There are two methods by which the fee table sets fees. One is to set fees for a specific component and the other is to set fees to cover a chapter, which may have multiple components within it. For instance, a chapter covers three specific components; if a project submits plans with one of those components, the cost is the same as if the project included all three items. The fees were estimated to try and average a cost of the chapter as opposed to line items within the chapter. Ideally, the fee would be accurate for a project that contains two of the three components. For Chapter 60, Screening, Grit Removal and Flow Equalization, the Department agrees with the commentor that the proposed fees for that chapter may benefit from further review. For the proposed fees associated with Chapter 40, Sewage pumping stations, the Board agrees with the commentor that the proposed fees may be excessive. The Board will make changes as indicated by interline for removed language and underline for added language. The Board expects to propose modifications to the fee table based on a review of future receipts and plan submittals.

COMMENT NO. 7: One commentor was concerned that the addition of various fee items may make the cost of review excessive.

RESPONSE: The additional fee items are necessary to reflect the greater amount of time and resources required to complete that review.

COMMENT NO. 8: Several comments were received indicating that the Department should consider placing the review service on independent contract.

RESPONSE: The Department attempted this approach and returned to review by Department engineers because of issues that arose concerning cost, conflict of interest, and management of files and records.

COMMENT NO. 9: One commentor gave an example of a "three-party small water system" and the estimated costs associated with the proposed fees as being an overly burdensome expense to a small system.

RESPONSE: Because a "three-party small water system" does not meet the statutory definition of a public water supply, it would be exempt from these proposed rules.

COMMENT NO. 10: One commentor was concerned that other expenses were being included in the fee table.

RESPONSE: Section 75-6-108, MCA, requires that the Department collect fees that must be "... commensurate with the cost to the Department of reviewing plans and specifications." The fees include overhead costs such as floor space rental, administrative assistance, file maintenance, electrical bills, equipment, etc. for review staff. Inclusion of these items in fees is necessary to comply with the statute's direction to cover costs. Modifications to the fee table may be made based on a review of future receipts.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

JAMES M. MADDEN
Rule Reviewer

By: _____
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, _____,
2005.